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May 24, 2021

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OF COUNSEL: RAYMOND SAYEG

VIA EMAIL

Christian Klein, Chairperson
Arlington Zoning Board of Appeals
51 Grove Street
Arlington, MA 02476

Re: Private Ways

Dear Chairperson Klein:

Pursuant to Attorney Roger Dupont's request, I have researched the issue as to whether vehicles may be towed from a private right-of-way. The authority to do so and the requirements that need to be complied with are set out in M.G.L. c.266, §120D, a copy of which I attach. Based upon the enclosed statute, only the Town, which has lawful control of the right-of-way, could order the removal of vehicles parked on the odd numbered side of Ryder Street and only if posted notice forbids parking.

Absent express limitations, a general right-of-way may be used for such purposes as are reasonably necessary to the full enjoyment of the premises to which the right-of-way is appurtenant. *Tehan v. Security National Bank of Springfield*, 340 Mass 176, 182 (1959). The inquiry becomes whether the use of right-of-way for parking is reasonably necessary for the full enjoyment of the property owned by residents abutting the right-of-way, who do not have an ownership interest in the right-of-way. *Young v. Ordnung*, Massachusetts Land Court Misc. No. 317903 (Sands, J.).

Here, the parking on Ryder Street is on that portion of the right-of-way owned by the Town of Arlington. Where the residents in the vicinity of the right-of-way have parking on their respective properties, the courts in Massachusetts have held that parking on a right-of-way may be convenient but it is not reasonably necessary. *Young v. Ordnung*, Massachusetts Land Court Misc. No. 317903 (Sands, J.).

Since the Ryder Street residents do not have an exclusive entitlement to park on the private way, it being owned by others, it is reasonable to infer that other area residents on bordering streets likely have the ability to park there.

It is exclusively in the purview and control of the Town if it chooses to: (a) post the notice required by M.G.L. c.266, §120D; (b) monitor the parking; and (c) cause vehicles to be towed.

KRATTENMAKER O'CONNOR & INGBER P.C.

Christian Klein, Chairperson

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I thank you.

Very truly yours,

Mary Winstanley O'Connor

MWO/ccg
Enclosure
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Part IV CRIMES, PUNISHMENTS AND PROCEEDINGS IN CRIMINAL CASES

Title I CRIMES AND PUNISHMENTS

Chapter 266 CRIMES AGAINST PROPERTY

Section 120D REMOVAL OF MOTOR VEHICLES FROM PRIVATE WAYS OR PROPERTY; PENALTIES; LIABILITY FOR REMOVAL AND STORAGE CHARGES; RELEASE OF VEHICLE

Section 120D. No person shall remove a motor vehicle which is parked or standing on a private way or upon improved or enclosed property unless the operator of such vehicle has been forbidden so to park or stand, either directly or by posted notice, by the person who has lawful control of such way or property. No vehicle shall be removed from such way or property without the consent of the owner of such vehicle unless the person who has lawful control of such way or property shall have notified the chief of police or his designee in a city or town, or, in the city of Boston the police commissioner, or a person from time to time designated by said police commissioner, that such vehicle is to be removed. Such notification shall be made before any such vehicle shall be removed, and shall be in writing unless otherwise specified by such chief of police or police commissioner and shall include the address from which the vehicle is to be removed, the address to which the vehicle is to be removed, the registration number of the vehicle, the name of the

person in lawful control of the way or property from which such vehicle is being removed, and the name of the person or company or other business entity removing the vehicle. Vehicles so removed shall be stored in a convenient location. Neither the city or town, nor its chief of police or police commissioner or his designee, shall be liable for any damages incurred during the removal or storage of any such vehicle removed under this section. Any person who, without notifying the chief of police or his designee, or the police commissioner or his designee, or without obtaining the consent of the owner, removes a vehicle from a private way or from improved or enclosed property as aforesaid, shall, in addition to any other penalty of law, be punished by a fine of not more than one hundred dollars. The employer of such person if any, shall also be punished by a fine of not more than one hundred dollars.

Any person who purports to authorize the removal of a vehicle from a way or property as aforesaid without having fully complied with the provision of this section shall be punished by a fine of not more than one hundred dollars.

In addition to any other penalty provided by law, the registered owner of a vehicle illegally parked or standing on a private way or upon improved or enclosed property shall be liable for charges for the removal and storage of such vehicle; provided, however, that the liability so imposed shall not exceed the following, and provided, further, that the vehicle has been removed after compliance with the provisions of this section:

(1) the maximum amount for towing or transportation of motor vehicles established by the department of telecommunications and energy for motor vehicles towed away when such towing is ordered by the police or

other public authority under the provisions of section six B of chapter one hundred and fifty-nine B; and

(2) the maximum charge for storage of non-commercial passenger motor vehicles with a maximum capacity of nine persons, shall be not more than the maximum storage charge allowed under the provisions of said section six B of said chapter one hundred and fifty-nine B.

A person lawfully holding a vehicle removed under the provisions of this section may hold such vehicle until the registered owner pays the removal and storage charges.

Any person who is called to remove by towing a vehicle illegally parked or standing on a private way or upon improved or enclosed property may, at his discretion, if the owner appears to remove said vehicle before the towing is completed, charge said owner one half of the fee usually charged for such towing.

Any person who removes a vehicle illegally parked or standing on a private way or upon improved or enclosed property, or holds such a vehicle after its removal, and who has not complied in full with the provisions of this section, shall release such vehicle to its owner without assessing any charges for its removal or storage.